

**HOFFMAN, Senior Judge**

In this interlocutory appeal, Richard Green appeals the trial court's grant of the State's motion to amend the charging information to add a count of conspiracy to commit robbery as well as a habitual offender count. We affirm.

The sole issue for our review is whether the trial court erred in granting the State's motion to amend the charging information to include a count of conspiracy to commit robbery and an habitual offender count.

In August 2006, the State charged Green with robbery as a class B felony for the armed robbery of the Scott County Bank. That same month, the State sent a request to the Commonwealth of Virginia for past judgments and convictions against Green.

At the August 31, 2006 initial hearing, Green entered a preliminary plea of not guilty, and the trial court scheduled the omnibus hearing for October 23, 2006. On January 8, 2007, the prosecutor sent defense counsel the following letter:

Please also be advised that I have every confidence that Green is an HABITUAL FELON, although I have not yet been successful in obtaining the out-of-state records to this effect. I have an FBI agent working on this, and I should know something soon, at which time I will be filing to amend and add the Habitual Count.

In an effort to resolve this matter without the necessity of a trial, I would offer a "blind" plea to a B felony with a fourteen [-] year cap. In such a circumstance, I would forgo filing the HFO.

State's Exhibit 2. Later that month, the prosecutor sent defense counsel a second letter advising him that the offer of a 14-year cap with no habitual offender filing would expire on February 2, 2007.

In April 2007, the State asked an FBI agent if he could obtain records regarding Green's prior out-of-state convictions. The agent sent the prosecutor information about

these convictions on April 23, May 3, and May 4. On June 6, 2007, the State filed a motion to amend the information by adding a count of conspiracy to commit robbery as well as an habitual offender count. Green objected to the amendments as untimely filed and prejudicial, and the trial court held a hearing on the objections. Following the hearing, the trial court issued an order that provides in relevant part as follows:

In making this ruling the Court finds the State of Indiana could obtain the same result by dismissing and refiling the charges against the Defendant, the original charge is not changed and the additional charge is of the same level felony, the probable cause affidavit as originally filed supports the amended additional count and the amendment is made seventy-four (74) days prior to trial thereby affording the Defendant a reasonable opportunity to prepare for the additional charge. . . .

1. The State of Indiana presented correspondence of ongoing plea negotiations in the form of letters to defense counsel of January 8, 2007 and January 30, 2007, (State's Exhibit 2 and 3). The earlier letter refers to efforts to obtain habitual felony offender records and the intent to seek to amend to add such a count.
2. The State of Indiana did provide information to the Defendant of inquiries to other states and responses from those states in August 2006, (collectively State's Exhibit 1).
3. The Defendant was also provided by the State of Indiana with certain information concerning an alleged criminal record of the Defendant in the State of Tennessee (State's Exhibit 4). . . .
4. The Defendant acknowledges that the information evidenced by the State's exhibits were received by the Defendant. . . .]

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11. Ongoing plea negotiations have consistently been found to constitute good cause for the belated filing of the habitual offender count. . . .
12. The time period before trial is not prejudicial to the Defendant. . . .
13. In making a finding that there is good cause to allow the amendment to include the Habitual Felony Offender count the Court is also persuaded by the ongoing attempt on the part of the State of Indiana to obtain records concerning the Defendant's alleged criminal history. There appears to be open disclosure to the Defendant on the part of the State as to those records that had been received . . . .

14. The Court finds that the[re] is good cause and grants the Motion to Amend.

Appellant's App. at 140-41. (Citations omitted). The trial court granted Green's motion to certify the order for interlocutory appeal, and this court granted Green's petition for an interlocutory appeal.

Green first argues that the trial court erred in granting the State's motion to amend the charging information to include a count of conspiracy to commit robbery. As a general rule, the law in effect at the time that the crime is committed is controlling. *Walsman v. State*, 855 N.E.2d 645, 650 (Ind. Ct. App. 2006). Here, at the time Green committed the bank robbery, Indiana Code Section 35-34-1-5(b) provided that an amendment of substance to an information had to take place thirty days before the omnibus hearing. However, as a general rule, the law allowed the amendment of an information at any time before, during, or after trial so long as the amendment did not prejudice the defendant's substantial rights. *Laughner v. State*, 769 N.E.2d 1147, 1158 (Ind. Ct. App. 2002), *trans. denied, cert. denied*, 538 U.S. 1013 (2003). Those rights were deemed not to have been prejudiced when the defendant had notice of the amended charge, an opportunity to be heard regarding the charge, and adequate time to prepare a defense. *Id.*

Here, Green had notice of the amendment, and his argument against the amendment was heard by the trial court. In addition, the amendment was filed 74 days before the scheduled trial, allowing Green ample time to prepare for trial. Under the law

in effect at the time Green committed the crime, the trial court did not commit reversible error in granting the State's motion to amend the information to include a conspiracy count. *See id.* (finding no reversible error in allowing the State to amend the information six days before trial).

Nevertheless, Green points out that five months after he committed the offenses in this case, the Indiana Supreme Court held that the statute means what it says and amendments of substance to an information have to be filed within thirty days of the omnibus date. *See Fajardo v. State*, 859 N.E.2d 1201, 1208 (Ind. 2007). Green argues that *Fajardo* should be applied retroactively to his case. However, this court recently determined that *Fajardo* is not to be retroactively applied. *See Leatherwood v. State*, 880 N.E.2d 315 (Ind. Ct. App. 2008). The trial court did not err in granting the State's motion to amend the charging information to include a count of conspiracy to commit robbery.<sup>1</sup>

Green also argues that the trial court erred in granting the State's motion to amend the charging information to include an habitual offender count. Specifically, he contends that the trial court erred in finding that the State demonstrated good cause for the habitual offender amendment.

Indiana Code Section 35-34-1-5(e) provides that an amendment to add an habitual offender count must be made not later than ten days after the omnibus date, or upon a showing of good cause, at any time before the commencement of trial. We review a trial

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<sup>1</sup> After our supreme court decided *Fajardo*, effective May 8, 2007, the Indiana legislature amended Section 35-34-1-5(b) to allow amendments to the information up until the day of trial unless the substantial rights of the defendant are affected.

court's finding of good cause for an abuse of discretion. *Land v. State*, 802 N.E.2d 45, 53 (Ind. Ct. App. 2004), *trans. denied*.

Ongoing plea negotiations have consistently been found to constitute good cause for the belated filing of an habitual offender count. *Id.* Here, the evidence reveals that there were ongoing pleas negotiations between Green and the State. The trial court did not abuse its discretion in finding that this constituted good cause for the belated filing.

In addition, this court has previously noted that the purpose of the time requirement for filing the habitual offender count is to allow a defendant sufficient time to prepare a defense for the habitual offender charge. *Watson v. State*, 776 N.E.2d 914, 917 (Ind. Ct. App. 2002). Here, the amendment was filed 74 days before trial, allowing Green time to prepare a defense to the charge. *See id.* (stating that habitual offender allegation added almost two months before trial left Watson time to prepare a defense to the charge). The trial court did not abuse its discretion in granting the State's motion to amend the information to include an habitual offender count.

Affirmed.

BARNES, J., and MATHIAS, J., concur.